

**REMARKS**

Reconsideration of the Office Action of March 25, 2004 respectfully is requested.

**1. Discussion of Claim Amendments**

Claim 2 has been cancelled in this Amendment.

Independent claim 1 has been amended to include the subject matter of cancelled claim 2. Specifically, independent claim 1 has been amended to recite that a wedge is connected to the guard. Claims 3, 4 and 6 have been amended to depend from claim 1.

The Examiner has indicated that claims 4, 7 and 9-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, claims 4, 7 and 9 have been rewritten in independent form as suggested by the Examiner; and as such Applicants respectfully submit these amendments should be considered as non-narrowing amendments.

After this amendment, claims 1, 3, 4, 6, 7, 9-13 and 16-20 are pending in this application.

**2. Drawings**

The Examiner has objected to the drawings under 37 CFR §1.83(a) because the "soft material [54] lining at least said connecting wall within the channel" as recited in claim 7 is not shown in the drawings. Accordingly, Applicants submit new drawing Fig. 15 which shows the soft material 54. In addition, pages 2 and 4 of the specification have been amended to make reference to new Fig. 15.

**3. 37 CFR §1.75(d) Objections**

The Examiner states that Applicants have evoked sixth paragraph, means-plus-function language to define Applicants' invention. Thus, the Examiner has requested that Applicants amend the specification pursuant to 37 CFR §1.75(d) to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, and acts perform the function recited in the claim element. For these reasons, claims 17 and 18 are also objected to by the Examiner.

Applicants submit that the specification explicitly states what structure, materials and acts perform the functions recited in claims 17 and 18. Specifically, at ¶ 0046, lines 1-4, the “means for protecting at least some teeth of a patient” is identified as the guard 20 which is shaped to fit over at least a portion of the lower teeth of a patient and more preferably all of the lower teeth of the patient. The specification also indicates that foam or soft material 54 located within the channel 202 of the guard 20 provides an additional cushion to any jarring that might occur during intubation or insertion/removal of other medial devices and instruments through the oral cavity. See ¶ 0057, lines 1-7. At ¶ 0047, lines 1-2, the “means for maintaining a distance between the protected teeth and the opposing teeth” is identified as the raised molar wedge 30, and by extension also the two wedge exemplary embodiment and column embodiment (see ¶ 0047, lines 25-26, ¶ 0056, lines 7-10). The specification states that, “the height of the wedge 30 preferably is such that the top of the wedge 30 will snugly contact the lower surface of one or more of the patient’s upper molars 92 ... to space the opposing upper and lower molars from each other by a sufficient distance to prevent the patient from bringing his upper and lower incisors into contact with each other and any inserted catheter or instrument.” See ¶ 0047, lines 7-13. At ¶ 0048, lines 1-3, the “means for holding a catheter against said teeth protecting means” is identified as the latch 40 and its alternative exemplary embodiments. The specification clearly states that the latch 40 is pivotally mounted with respect to the guard 20 for securing the catheter. Furthermore, the specification states that “... the latch 40 preferably is sufficiently rigid to shield the catheter 60 from being occluded by the patient’s lower and upper incisors and this rigidity provides a means for protecting the catheter from occlusion.” See ¶ 0049, lines 13-17, ¶ 0052, lines 5-9. Thus, the “means for protecting the catheter from occlusion” is identified as the rigidity of the latch 40.

The Examiner also has objected to the specification under 37 CFR 1.75(d)(1) as failing to provide proper antecedent basis for the subject matter in claim 7. Specifically, the Examiner asserts that there is no support in the specification for “a soft material lining at least said connecting wall within the channel.” At ¶ 0057, lines 1-3, the specification states that, “another embodiment is to fill the channel 202 within the guard

20 with a foam or other similar soft material to provide a better fit to the patient's teeth." The channel 202 is comprised of two side walls 204 and 206, and a connecting wall (ceiling/bottom) 208. See ¶ 0046, lines 14-15 and Fig. 8. Accordingly, if the channel 202 is filled with a soft material, at least a portion of the inside surface of the channel must be covered with the soft material. The connecting wall 208 defines a portion of the inside surface of the channel 202; thus, the soft material may line at least the connecting wall 208 within the channel 202.

For the reasons expressed above, Applicants respectfully request that the objections under 37 CFR 1.75(d) be withdrawn as overcome.

#### **4. 35 U.S.C. §102(b) Rejection**

Claims 1-3, 6 and 16-18 have been rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,626,128 to Bradley et al. (hereinafter Bradley). Applicants respectfully traverse this rejection.

35 U.S.C. §102 by its language requires that each and every element of a claim be present in a single cited reference to properly have that reference anticipate that claim. See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566, 1567 (Fed. Cir. 1992), citing *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988); *Lindemann Maschinenfabrik v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984); *Minnesota Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321, 1326 (Fed. Cir. 1992); *Elmer v. ICC Fabricating Inc.*, 67 F.3d 1571, 36 USPQ2d 1417, 1419 (Fed. Cir. 1995).

##### **a. Claims 1, 3 and 16**

Independent claim 1 describes a device for securing a catheter within a mouth of a patient comprising a guard having an anterior region and two posterior regions, a latch in communication with the guard and a wedge connected to the guard.

Bradley teaches a medical device for maintaining the insertion depth of an endotracheal tube. Col. 3, lines 23-25. The device has a body member 20 with a superior surface 22, an inferior surface 24, an anterior aspect 26 and a posterior aspect

28. The body member 20 defines a passage 29 for receiving an endotracheal tube through the anterior aspect 26 thereof. Col. 3, lines 32-36. A means 40 is provided for affixing the endotracheal tube 14 to the body member 20. The endotracheal fixation means 40 has a forward portion 42 extending from the anterior aspect 22 of the body member 20 and terminating in a forward end clamping means 44.

Bradley fails to disclose a catheter securing device comprising a wedge connected to a guard as claimed in the present invention. Applicants are uncertain how the forward portion 42 described in Bradley could be considered to be the wedge recited in claim 1. The wedge of the present invention is for contacting the upper or lower molars of a patient's mouth and to space the opposing upper and lower molars from each other by a sufficient distance to prevent the patient from bringing his upper and lower molars into contact with each other. See ¶ 0047, lines 1-3, 10-13. Bradley fails to disclose or suggest such a wedge. Therefore, Bradley does not teach each and every element of independent claim 1. Applicants respectfully submit that claim 1 is patentable over Bradley. Since claims 3, and 16 depend from claim 1 and recite additional claim features, Applicants further submit that claims 3 and 16 are also patentable over Bradley.

b. Claims 17 and 18

Independent claim 17 describes a securing device comprising means for protecting at least some teeth of a patient, means for maintaining a distance between the protected teeth and the opposing teeth, and means for holding a catheter against said teeth protecting means.

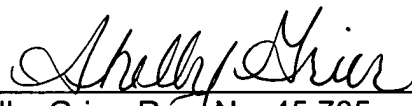
Bradley fails to disclose a securing device including, for example, means for maintaining a distance between the protected teeth and the opposing teeth as described above. Furthermore, Bradley fails to describe a holding means as claimed in the present invention. Accordingly, Applicants respectfully submit that independent claim 17 is patentable over Bradley, and that claim 18 is patentable over Bradley because it depends from claim 17.

For the reasons expressed above, Applicants request that this rejection be withdrawn as overcome.

**5. Conclusion**

In view of the above amendments and Remarks, it courteously is urged that all the claims are allowable and that the application now is in condition for allowance. If the Examiner believes that the prosecution could be advanced through a telephone conversation, then the Examiner is invited to telephone the undersigned. Favorable action in this regard earnestly is solicited.

Respectfully submitted,  
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